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ABSTRACT

Nine guidelines developed by a negotiating committee are presented which apply the fair use doctrine to the recording, retention, and use of television broadcast programs for educational purposes. A brief background on the committee (appointed by Congressman Robert Kastenmeier) and its actions is included. (DC)

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GUIDELINES FOR OFF-AIR COPYING

by John D. Magaro

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Guidelines for Off-Air Copying

by John D. Magaro

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The most notable feature of the 15-year effort to revise the Nation's copyright laws, which was largely completed in 1976, was the coorperative nature of that effort. There were fierce struggles over particular issues. However, in the last analysis, almost every affected group desired that the revision effort succeed, and contributed to that success by modifying and compromising their initial positions.

This spirit of cooperation was expressed most visibly in efforts on the part of proprietors and users in working out a series of guidelines defining fair use in certain situations. Three sets of guidelines were ultimately agreed upon and were published as part of the official legislative history of the act. These guidelines covered classroom copying of books and periodicals in nonprofit educational institutions, educational uses of music, and photocopying by libraries. Another area in which parties had been negotiating but in which guidelines were not forthcoming, was off-the-air taping of copyrighted broadcast programs.

A Negotiating Committee of interested parties developed by the Judiciary Committee has drafted guidelines for use by copyright owners and educators which will go a long way towards resolving the lingering problems associated with off-air videotaping of copyright works for educational purposes. These guidelines will help solve an important problem, hopefully without further legislation and litigation. The Negotiating Committee believes that these guidelines reach an appropriate balance between the proprietary rights of copyright owners and the instructional needs of educational institutions. Beyond these guidelines specific permissions from copyright proprietors may be required under the Copyright Law.

In March 1979 Congressman Robert Kastenmeier, Chairman of the House Subcommittee on Courts, Civil Liberties, and Administration of Justice, appointed a negotiating committee consisting of representatives of educational organizations, copyright proprietors and creative guilds and unions. The following guidelines reflect the Negotiating Committee's consensus as to the application of "fair use" to the recording, retention, and use of television broadcast programs for educational purposes. They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyright television programs.

1. The guidelines were developed to apply only to off-air recording by non-profit educational institutions.

2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.

3. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period. "School days" are school session days — not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions — within the forty-five (45) calendar day retention period.

4. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.

6. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45 calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.

7. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

9. Educational institutions are expected to establish appropriate control procedures, to maintain the integrity of these guidelines.

The Negotiating Committee has concern that these guidelines reach an appropriate balance between the proprietors rights of copyright owners and the instructional needs of educational institutions. The Negotiating Committee recognized that beyond these guidelines specific licenses or permission from copyright proprietors may be required under the copyright law. The Committee believes that these guidelines should be reviewed periodically at reasonable intervals. Even though the guidelines have wide support, they were not officially endorsed by the Association of Media Producers, the trade association representing the producers and distributors of educational media materials.